

04-28930

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Chapter 13 Case:

Case Number BKY 04-33702-GFK

Ernest Raehsler, Sr.  
Velinda Raehsler,

Debtor(s)

**NOTICE OF HEARING AND MOTION  
FOR RELIEF FROM STAY**

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. Mortgage Electronic Registration Systems, Inc. moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 10:30 a.m., on September 27, 2004, in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul Minnesota.

3. Any response to this motion must be filed and delivered not later than September 22, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 16, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on June 23, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On October 16, 2003, Ernest Raehsler and Velinda Raehsler made, executed and delivered to Mortgage Electronic Registration Systems, Inc. their Note (hereinafter referred to as the "Note"), in the original principal amount of \$166,500.00 bearing interest from the date thereof at the rate of 7.750% per annum until paid, payable in monthly installments of \$1,192.83 commencing on December 1, 2003 and on the first day of each and every calendar month

thereafter until the principal and interest were fully paid. A copy of the Note is attached hereto as Exhibit "A" and made a part thereof by reference.

7. On October 16, 2003, to secure the payment of the Note, Ernest Raehsler and Velinda Raehsler executed and delivered to Mortgage Electronic Registration Systems, Inc. their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Dakota County, Minnesota, legally described as follows:

Lot 14, Block 7 in Cedar Grove No. 7, Dakota County, Minnesota which property has an address of: 4001 Blackhawk Road, Eagan, MN 55122-1762. The mortgage was filed for record in the office of the Registrar of Titles, County of Dakota, on December 11, 2003, as Document No.0524042, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage is attached hereto as Exhibit "B" and made a part hereof by reference.

8. The debtors have filed a modified plan dated August 25, 2004, which has not been confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the June, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

3 payments @ \$1,411.17	\$4,233.51
3 late charges @ \$59.64	178.92
Attorneys Fees & Costs	<u>800.00</u>
TOTAL POST-PETITION	\$5,212.43

Through Debtors' failure to make current post-petition payments. No payments have been made pursuant to the plan. Amounts currently due and owing include the following:

Principal	\$165,904.77
Interest	5,286.56
Accumulated late fees	417.48
Attorneys Fees & Costs	<u>950.00</u>
TOTAL	\$172,558.81

11. Debtors have claimed said mortgaged property as exempt pursuant to 11 USC 522 (d) (1).

12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

13. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Mortgage Electronic Registration Systems, Inc. moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.

2. For such other and further relief as the Court finds just and proper.

Dated:

A.G.A.

Signed: /e/ Nancy A. Nordmeyer

SHAPIRO & NORDMEYER, L.L.P.  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060

VERIFICATION

I, Dan Arntsen, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

9.7.01

Signed:

[Signature]

Fidelity National Foreclosure Solutions  
1270 Northland Drive, Suite 200  
Mendota Heights, MN 55120

ADJUSTABLE RATE NOTE Loan Number 13669565  
(LIBOR Index - Rate Caps)

1001527-1100000278-8

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

OCTOBER 16, 2003, EAGAN, MINNESOTA  
[City] [State]  
4001 BLACKHAWK ROAD, EAGAN, MINNESOTA 55122-1762  
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$166,500.00 (this amount is called "principal") plus interest, to the order of the Lender. The Lender is MORTGAGE ONE, INC., A MINNESOTA CORPORATION. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 7.75%. The interest rate I will pay will change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month. I will make my monthly payments on the 1st day of each month beginning on DECEMBER 1, 2003. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If on NOVEMBER 1, 2033, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date." I will make my monthly payments at 1400 CORPORATE CENTER CURVE, SUITE 150, EAGAN, MINNESOTA 55122 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$1,192.83. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of NOVEMBER 1, 2005, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar deposits in the London market based on quotations of major banks, as published in The Wall Street Journal. The rate published in The Wall Street Journal on the date 45 days before each Change Date as being the London interbank offered rate on the preceding business day is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding EIGHT AND 125/1000 percentage points (8.125%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal (and interest expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.



HF NOTE

Page 1 of 3

Adjustable Rate Note (LIBOR Index Rate Caps)  
OMAC Residential Funding Form 1002 (10/91)

Borrower Initials: ER VR

DOC. NO. 0524042

0524042

OFFICE OF THE COUNTY REGISTRAR OF TITLES  
DAKOTA COUNTY, MINNESOTA  
CERTIFIED THAT THE WITHIN INSTRUMENT  
WAS RECORDED IN THIS OFFICE ON AND AT

2003 DEC 11 P 1:47

CERTIFICATE NO. 119594  
JOEL T. BECKMAN REGISTRAR OF TITLES

BY: DEB Deputy  
FEE 15.00 SURCHARGE 5.00

ASSURANCE FUND \_\_\_\_\_ MISC FEE \_\_\_\_\_

NON-ASSUR \_\_\_\_\_ CHECK ☒ ESCROW ☐

CASH ☐ WELL ☐ CHARGE ☐

CHARGE TO: \_\_\_\_\_ O/R 2.00

DO NOT REMOVE

*Premier Title*

DAKOTA COUNTY TREASURER-AUDITOR  
11/25/2003 09:33:55 83897  
REGISTRATION TAX 382.95  
COUNTY CONSERVATION FEE 5.00  
RECEIPT NUMBER 632853

## MORTGAGE

After Recording Return To:

MORTGAGE ONE, INC.

1400 CORPORATE CENTER CURVE, SUITE 150

EAGAN, MINNESOTA 55121

Loan Number: 13669565

*Return to Premier  
Title File 17225*

RECEIVED

MIN: 1001527-1100000278-8

### DEFINITIONS

DAKOTA COUNTY  
TREASURER-AUDITOR

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated OCTOBER 16, 2003, together with all Riders to this document.

(B) "Borrower" is ERNEST RAEHSLER AND VELINDA RAEHSLER HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679 MERS.

(D) "Lender" is MORTGAGE ONE, INC.

Lender is a CORPORATION

organized

and existing under the laws of MINNESOTA

Lender's address is 1400 CORPORATE CENTER CURVE, SUITE 150, EAGAN, MINNESOTA 55121

(E) "Note" means the promissory note signed by Borrower and dated OCTOBER 16, 2003. The Note states that Borrower owes Lender ONE HUNDRED SIXTY SIX THOUSAND FIVE HUNDRED AND 00/100 Dollars (U.S. \$166,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than NOVEMBER 1, 2033.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 04-33702-GFK  
Chapter 13

Ernest Raehsler, Sr.  
Velinda Raehsler,

Debtor(s)

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MEMORANDUM OF LAW

Mortgage Electronic Registration Systems, Inc. ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$5,212.43.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 2 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$172,558.81.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 9.9.01.

Respectfully submitted,  
**SHAPIRO & NORDMEYER, L.L.P.**

By: /e/ Nancy A. Nordmeyer  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for Movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060



SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA       )  
                                      ) SS  
COUNTY OF HENNEPIN       )

I, **Stephanie Pilegaard** says that on September 9, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

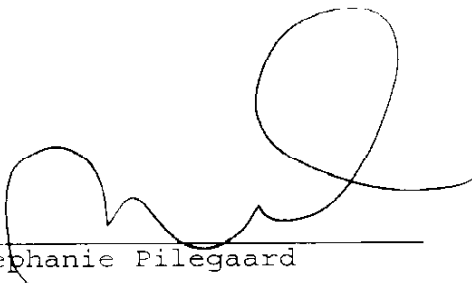
Ernest Raehsler, Sr.  
4001 Blackhawk Road  
Eagan, MN 55122

Velinda Raehsler  
4001 Blackhawk Road  
Eagan, MN 55122

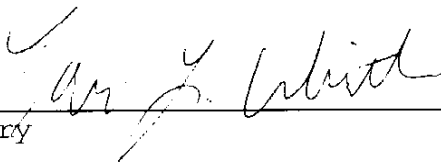
Craig Andresen, Esq.  
2001 Killebrew Drive STE 330  
Bloomington, MN 55425

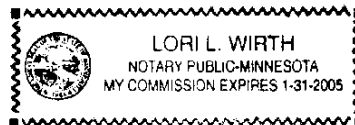
Jasmine Z. Keller, Trustee  
12 South 6th Street, #310  
Minneapolis, MN 55402

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th St.  
Minneapolis, MN 55415

  
\_\_\_\_\_  
Stephanie Pilegaard

Subscribed and sworn to before me September 9, 2004.

  
\_\_\_\_\_  
Notary



04-28930  
0436794382

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-33702-GFK

Ernest Raehsler, Sr.  
Velinda Raehsler,  
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on September 27, 2004.

**THIS CAUSE** coming to be heard on the Motion of Mortgage Electronic Registration Systems, Inc., a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

**IT IS HEREBY ORDERED,**

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Mortgage Electronic Registration Systems, Inc., its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lot 14, Block 7 in Cedar Grove No. 7, Dakota County,  
Minnesota

**NOTWITHSTANDING** Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
Judge of Bankruptcy Court